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2 Nevada Bar No.9800
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4 Nevada Bar No. 12988
5 **PHILLIPS, SPALLAS & ANGSTADT, LLC**
6 504 South Ninth Street
7 Las Vegas, Nevada 89101
(702) 938-1510

6 *Attorneys for Defendant
Sam's West, Inc.*

7 UNITED STATES DISTRICT COURT

8
9 DISTRICT OF NEVADA

10 KEVIN BROWN, an individual,

11 Plaintiff,

12 v.

13 SAM'S WEST, INC.; ADVANTAGE SALES
14 AND MARKETING, LLC; and DOES 1
through 100,

15 Defendants.

Case No.: 2:15-cv-01964-LDG-CWH

**DEFENDANT SAM'S WEST, INC.'S
ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

16 COMES NOW, Defendant SAM'S WEST INC. (hereinafter "Sam's Club"), by and through its
17 counsel of record, the law firm of PHILLIPS, SPALLAS & ANGSTADT, LLC, and hereby submits
18 its Answer to Plaintiff's First Amended Complaint as follows:

19
20 **GENERAL ALLEGATIONS**

21 1. Answering Paragraph 1 of Plaintiff's First Amended Complaint on file herein, Sam's
Club lacks sufficient knowledge or information upon which to base a belief as to the truth or falsity of
23 the allegations contained therein, and therefore denies the same.

24 2. Answering Paragraph 2 of Plaintiff's First Amended Complaint on file herein, Sam's
Club admits that it operated a Sam's Club store at 8080 W. Tropical Parkway, Las Vegas, NV 89149
26 on May 15, 2015; as to all remaining allegations, Sam's Club denies each and every allegation
27 contained therein.

1 3. Answering Paragraph 3 of Plaintiff's First Amended Complaint on file herein, Sam's
2 Club lacks sufficient knowledge or information upon which to base a belief as to the truth or falsity of
3 the allegations contained therein, and therefore denies each and every allegation.
4

5 4. Answering Paragraph 4 of Plaintiff's First Amended Complaint on file herein, Sam's
6 Club lacks sufficient knowledge or information upon which to base a belief as to the truth or falsity of
7 the allegations contained therein, and therefore denies the same.
8

9 5. Answering Paragraph 5 of Plaintiff's First Amended Complain on file herein, Sam's
10 Club admits that it is a foreign corporation duly authorized to conduct business in Clark County,
11 Nevada; as to all remaining allegations, Sam's Club lacks sufficient knowledge or information upon
12 which to base a belief as to the truth or falsity of the allegations contained therein, and therefore
13 denies each and every allegation.
14

15 6. Answering Paragraph 6 of Plaintiff's First Amended Complain on file herein, Sam's
16 Club, Plaintiff has pled legal conclusions rather than factual allegations and therefore no response is
17 required. To the extent the allegations require a response, Sam's Club lacks sufficient knowledge or
18 information upon which to base a belief as to the truth or falsity of the allegations contained therein,
19 and therefore denies each and every allegation.
20

FIRST CAUSE OF ACTION

(Negligence/Premises Liability/Failure to Warn)

21 7. Answering Paragraph 7 of Plaintiff's First Amended Complaint on file herein, Sam's
22 Club incorporates by reference its answers contained in paragraphs 1 through 6 as if fully set forth
23 herein.
24

25 8. Answering Paragraph 8 of Plaintiff's First Amended Complaint on file herein, Sam's
26 Club lacks sufficient knowledge or information upon which to base a belief as to the truth or falsity of
27 the allegations contained therein, and therefore denies each and every allegation.
28

1 9. Answering Paragraph 9 of Plaintiff's First Amended Complaint on file herein, Plaintiff
2 has pled legal conclusions rather than factual allegations and therefore no response is required. To the
3 extent the allegations require a response, Sam's Club lacks sufficient knowledge or information upon
4 which to base a belief as to the truth or falsity of the allegations contained therein, and therefore
5 denies each and every allegation.
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7 10. Answering Paragraph 10 of Plaintiff's First Amended Complaint on file herein, Sam's
8 Club denies each and every allegation contained therein.

9 11. Answering Paragraph 11 of Plaintiff's First Amended Complaint on file herein,
10 Plaintiff has pled legal conclusions rather than factual allegations and therefore no response is
11 required. To the extent the allegations require a response, Sam's Club denies each and every allegation
12 contained therein.
13

14 12. Answering Paragraph 12 of Plaintiff's First Amended Complaint on file herein,
15 Plaintiff has pled legal conclusions rather than factual allegations and has alleged damages, and
16 therefore no response is required. To the extent the allegations require a response, Sam's Club denies
17 each and every allegation contained therein.
18

19 13. Answering Paragraph 13 of Plaintiff's First Amended Complaint on file herein,
20 Plaintiff has pled legal conclusions rather than factual allegations and has alleged damages, and
21 therefore no response is required. To the extent the allegations require a response, Sam's Club denies
22 each and every allegation contained therein.
23

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

25 The contents of Plaintiff's Summons did not conform to the requirements of Rule 4 of the
26 Nevada Rules of Civil Procedure, and Plaintiff's process is therefore insufficient.
27

SECOND AFFIRMATIVE DEFENSE

Plaintiff's service of his Summons and Complaint on Sam's Club did not conform to the requirements of Rule 4 of the Nevada Rules of Civil Procedure, and Plaintiff's service of process is therefore insufficient.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has failed to name essential parties necessary for full and adequate relief in this action.

FOURTH AFFIRMATIVE DEFENSE

The allegations of Plaintiff's First Amended Complaint fail to state a cause of action upon which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the Statute of Limitations.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of waiver, release, laches, unclean hands, and equitable estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's injuries and damages, if any there were, were directly and proximately caused by forces of nature over which Sam's Club had no control.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff assumed whatever risks or hazards which existed at the time of the events alleged in the First Amended Complaint, and therefore is responsible for the injuries and damages suffered, if any there were.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's alleged injuries and damages, as set forth in his First Amended Complaint, were caused in whole or in part by the negligence or conduct of third parties over which Sam's Club had no control.

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2 TENTH AFFIRMATIVE DEFENSE
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4 Plaintiff's alleged injuries and damages, if any, are not attributable to any act, conduct, or
5 omission on the part of Sam's Club.
6

7 ELEVENTH AFFIRMATIVE DEFENSE
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9 Plaintiff's action is barred and/or his recovery is diminished by his contributory negligence
10 and/or comparative fault due to his failure to use reasonable care in protecting his own health.
11 Plaintiff is not entitled to a recovery from Sam's Club, in that any loss sustained by Plaintiff is the
12 result of negligence or actionable fault on the part of Plaintiff.
13

14 TWELFTH AFFIRMATIVE DEFENSE
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16 Plaintiff's negligence exceeds that of Sam's Club, if any, and Plaintiff is therefore barred from
17 any recovery.
18

19 THIRTEENTH AFFIRMATIVE DEFENSE
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21 Plaintiff's injuries and damages, if any there were, were pre-existing and/or caused by a
22 subsequent accident or incident.
23

24 FOURTEENTH AFFIRMATIVE DEFENSE
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26 Plaintiff has failed to mitigate his damages, and, thus his recovery, if any, should be reduced
27 accordingly.
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29 FIFTEENTH AFFIRMATIVE DEFENSE
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31 Plaintiff has voluntarily waived any rights he may have or have had against Sam's Club.
32

33 SIXTEENTH AFFIRMATIVE DEFENSE
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35 Sam's Club complied with all applicable Nevada and federal statutes, regulations, and codes at
36 all relevant times stated in the Plaintiff's First Amended Complaint.
37 //
38

SEVENTEENTH AFFIRMATIVE DEFENSE

Sam's Club contends that if Plaintiff suffered any injury or damages as a result of the conduct he attributes to Sam's Club, Sam's Club alleges that prior to the incident giving rise to this action Plaintiff was aware of the risks and hazards, if any, at the time and place of the incident, and that whatever the conditions were at such time and place, they were obvious, discernible, and were in fact known to and by Plaintiff, and that he nonetheless freely and voluntarily consented to assume and did assume these risks and hazards, if any there were.

EIGHTEENTH AFFIRMATIVE DEFENSE

Sam's Club hereby incorporates by reference those Affirmative Defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Sam's Club reserves the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

NINETEENTH AFFIRMATIVE DEFENSE

It has been necessary for Sam's Club to employ the services of an attorney to defend this action, and a reasonable sum should be allowed for attorney's fees, together with the costs expended in this action.

TWENTIETH AFFIRMATIVE DEFENSE

Sam's Club denies each and every allegation of Plaintiff's First Amended Complaint not specifically admitted, denied, or otherwise pled to herein.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Sam's Club hereby reserves the right to add additional affirmative defenses as discovery progresses.

11

1 TWENTY-SECOND AFFIRMATIVE DEFENSE

2 Sam's Club hereby affirmatively pleads the application of the several liability provisions of
3 NRS 41.141, as there is a *bona fide* issue of contributory negligence.

4 TWENTY-THIRD AFFIRMATIVE DEFENSE

5 Defendant hereby incorporates by reference those Affirmative Defenses enumerated in Nevada
6 Rule of Civil Procedure 12(b) and Federal Rule of Civil Procedure 12(b).

7 TWENTY-FOURTH AFFIRMATIVE DEFENSE

8 To the extent that Plaintiff engaged in illegal activities during or pursuant to the subject
9 incident, Plaintiff's claims are barred.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Defendant Sam's Club prays for judgment as follows:

12 1. That Plaintiff take nothing by his First Amended Complaint;
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14 2. That Plaintiff's First Amended Complaint be dismissed, with prejudice, as to
15
16 Defendant Sam's Club;
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17 3. That Defendant Sam's Club recover attorney's fees and costs incurred herein; and
18
18 4. For such further relief as the Court may deem just and proper under the circumstances.

19 DATED this 6th day of April, 2016.

20 **PHILLIPS, SPALLAS & ANGSTADT LLC**

21 /s/ *Pooja Kumar*

22
23 POOJA KUMAR
24 Nevada Bar No. 12988
25 504 South Ninth Street
26 Las Vegas, Nevada 89101
27 (702) 938-1510

28 *Attorneys for Defendant
Sam's West, Inc.*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 6th day of April, 2016, I served a true and correct copy of the
3 foregoing **DEFENDANT SAM'S WEST, INC.'S ANSWER TO PLAINTIFF'S FIRST**
4 **AMENDED COMPLAINT**, by facsimile and by U.S. Mail, in a sealed envelope, first-class postage
5 fully prepaid, addressed to the following counsel of record, at the address listed below:
6

ATTORNEY OF RECORD	TELEPHONE/FAX	PARTY
JUSTIN L. WATKINS, ESQ. Nevada Bar No. 9217 ATKINSON WATKINS & HOFFMAN, LLP 10789 W. Twain Ave., Suite 100 Las Vegas, NV 89135	Phone 702-562-6000 Fax 702-562-6066	Plaintiff

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12 An Employee of PHILLIPS, SPALLAS & ANGSTADT LLC
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